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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

E VERRICK WISE an individual, **NOEL
RUSSELL**, an individual,

Plaintiffs,

v.

**STATE FARM GENERAL INSURANCE
COMPANY**, an Illinois corporation, and
DOES 1 through 10,

Defendants.

Case No. 4:23-cv-00163-HSG

**PLAINTIFFS' (1) NOTICE OF
ADMINISTRATIVE MOTION AND
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER ANOTHER
PARTY'S MATERIAL SHOULD BE
SEALED, and (2) SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

[LOCAL RULES 7-11 & 75-5(f)]

*[Filed Concurrently with the Declaration of
Christopher Carling and a [Proposed]
Order.]*

Judge: Hon. Haywood S. Gilliam

Complaint filed: January 12, 2023
Trial Date: July 22, 2024

1 TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE that, pursuant to Civil L.R. 7-11 and L.R. 79-5, Plaintiffs
4 E Verrick Wise and Noel Russell (“Plaintiffs”) will and hereby do move for administrative relief
5 permitting Plaintiffs to file under seal Exhibit R and Exhibit X as evidence in support of their
6 Motion for Partial Summary Judgment. As explained in this Motion and the concurrently filed
7 Declaration of Christopher Carling, Plaintiffs move to file Exhibit R and Exhibit X under seal
8 pursuant to Local Rule 79-5(f) and the Protective Order entered in this case.

9 This Motion is based upon this Notice of Motion and Motion, the attached Memorandum
10 of Points and Authorities, the concurrently filed Declaration of Christopher Carling, a [Proposed]
11 Order, all of the pleadings records and papers on file in this action, and upon such further
12 documentary evidence and argument as may be presented at or before any hearing on this
13 Motion.

14 Date: January 9, 2024

Kerley Schaffer LLP

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16 /s/ Christopher Carling
Christopher Carling
Attorney for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff respectfully submits this Administrative Motion requesting that this Court enter an Order allowing the filing of Exhibit R and Exhibit X under seal as supplemental evidence in support of Motion for Partial Summary Judgment.

INTRODUCTION

In this action, Plaintiffs asserts a claim for tortious breach of the implied covenant of good faith and fair dealing and prays for punitive damages. Specifically, Plaintiffs sue on the basis that their homeowners' insurer, State Farm Gen. Ins. Co., ("State Farm") unreasonably denied their water loss claim arising from a broken hot water supply line below Plaintiffs' kitchen sink.

By way of a concurrent filing, Plaintiffs seek an order granting partial summary judgment. Two pieces of documentary evidence that support Plaintiffs' request for partial summary judgment have been marked as "CONFIDENTIAL" by counsel for State Farm pursuant to the terms of the Protective Order entered in this case. [See Docket No. 32.] The terms of the Protective Order require Plaintiffs to seek permission from the Court to file these two subject exhibits under seal by way of an administrative motion under Local Rule 79-5(f).

Exhibit R is a two-page portion of State Farm's "Operation Guide" which is essentially a claims adjusting manual published by the carrier and made available to claims staff who are responsible for adjusting claims and for management responsible for supervising those who are responsible for adjusting claims. Exhibit R is the specific portion of the Operation Guide called "State Farm Premier Service® Program (SFPSP) Mitigation Services Program" and relates to the circumstances under which a mitigation vendor may be used to assist in the mitigation of water damage after a loss. Exhibit R was produced in this lawsuit by State Farm and bears Bates Nos. WISEV00000143PROD through WISEV00000144PROD.

Exhibit X is a ten-page "Water Loss Skill Review" assessment tool used by State Farm to train its claims staff and management on coverage issues triggered by water events. Exhibit X

1 was produced in this lawsuit by State Farm and bears Bates Nos. WISEV00003860PROD
2 through WISEV00003869PROD.

3 Local Rule 79-5(f) because Plaintiffs seek to file exhibits which have been
4 designated as confidential by Defendant State Farm from whom Plaintiff received the
5 documents. Pursuant to Local Rule 79-5(f)(1), Plaintiffs' burden with respect to this motion is
6 simply identify each document or portions thereof for which sealing is sought. However, the
7 Filing Party (here, Plaintiffs) need not satisfy the showing required in Local Rule 79-5(c)(1)
8 because the Filing Party (Plaintiffs) are not the party that has designated the exhibits as
9 "CONFIDENTIAL".

10 Plaintiffs file this motion seeking Court permission to file Exhibit R under and Exhibit X
11 under seal.

12 ARGUMENT

13 State Farm produced Operation Guide called "State Farm Premier Service® Program
14 (SFPSP) Mitigation Services Program" (i.e. Exhibit R). The document is relevant to the Plaintiffs
15 theory of liability, as it is the material confirms State Farm considered the relevant water event a
16 covered loss, in part, due to the involvement of the mitigation vendor ServPro.

17 State Farm also produced a training document entitled "Water Loss Skill Review" (i.e.
18 Exhibit X). The document is relevant to the Plaintiffs theory of liability, as it is the material that
19 the defendant used to train its employees to evaluate the specific claim that gave rise to this
20 action.

21 Pursuant to the Protective Order issued in this case, Defendant State Farm has designated
22 each document as confidential. Plaintiffs seek to submit both Exhibit R and Exhibit X as
23 evidence in support of their Motion for Partial Summary Judgment. Plaintiffs' Motion for
24 Summary Judgment, filed concurrently with the instant administrative motion, was filed without
25 Exhibit R and Exhibit X. While this administrative motion is pending, placeholders have been
26 inserted in the locations of the Summary Judgment filings where these two exhibits would
27 otherwise appear.

1 Because the documents have been designated as confidential by Defendant State Farm
2 and are relevant to Plaintiffs' Motion for Partial Summary Judgment, the Court should grant
3 Plaintiffs' motion to file the relevant exhibits under seal. Pursuant to Local Rule 79-5(d)(2), a
4 true and correct copies of Exhibit R and Exhibit X are attached to this Motion.

5 **CONCLUSION**

6 For all of the foregoing reasons, Plaintiffs respectfully asks that the Court grant its
7 Administrative Motion and enter an order permitting Plaintiffs to supplement the evidence in
8 support of their Motion for Partial Summary Judgment with the filing of the herein described
9 Exhibit R and Exhibit X under seal.

10 Date: January 9, 2024

Kerley Schaffer LLP

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12 /s/ Christopher Carling
13 Christopher Carling
14 Attorney for Plaintiffs
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